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OPPENHEIMER CINE RENTAL, LLC, OPPENHEIMER CAMERA PRODUCTS,
INC., and MARTY OPPENHEIMER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VOICE INTERNATIONAL, INC., a
California corporation; DAVID GROBER,
an individual,

Plaintiffs,

v.

OPPENHEIMER CINE RENTAL, LLC, a
Washington corporation; OPPENHEIMER
CAMERA PRODUCTS, INC., a
Washington corporation; MARTY
OPPENHEIMER, an individual, JORDAN
KLEIN, SR., an individual, JORDAN
KLEIN, JR., an individual, JOHN DANN,
an individual, MAKO PRODUCTS, an
unknown entity, OCEANIC
PRODUCTION EQUIPMENT, LTD., a
Bahamian company; and DOES 1-10,
inclusive,

Defendants.

Case No.: CV-15-08830-JAK-KS

Hon. Judge John A. Kronstadt

**DEFENDANTS OPPENHEIMER
CINE RENTAL, LLC,
OPPENHEIMER CAMERA
PRODUCTS, INC. AND MARTY
OPPENHEIMER'S ANSWER TO
PLAINTIFF'S AMENDED
COMPLAINT**

[JURY DEMAND REQUESTED]

Complaint filed: 11/12/15

1 Defendants Oppenheimer Cine Rental, LLC, Oppenheimer Camera Products,
2 Inc., and Marty Oppenheimer (collectively, "Oppenheimer Defendants") hereby
3 Answer the Amended Complaint (Dkt. No. 36) of Plaintiffs Voice International, Inc.
4 and David Grober (collectively, "Plaintiffs"). Oppenheimer Defendants are not
5 responding to the Amended Complaint on behalf of the newly-added Defendants,
6 Jordan Klein, Sr., Jordan Klein, Jr., John Dann, Mako Products, or Oceanic
7 Production Equipment, or otherwise making any representations or admissions on
8 behalf of those newly-added Defendants.

9 Oppenheimer Defendants hereby respond to the Amended Complaint, as
10 follows:

11 **JURISDICTION AND VENUE**

12 1. Oppenheimer Defendants admit that this Court has subject matter
13 jurisdiction over this action under the referenced statutes as they are alleged to arise
14 under the laws of the United States, but deny that any such claims have merit.

15 2. Oppenheimer Defendants have consented to submit to the personal
16 jurisdiction of this Court for this particular case (Dkt. No. 33). Oppenheimer
17 Defendants admit that they have conducted some business in this District but not with
18 respect to the accused MakoHead Camera Stabilizers products, and deny that they are
19 subject to personal jurisdiction of this Court. Oppenheimer Defendants deny all
20 remaining allegations set forth in paragraph 2 of the Complaint.

21 3. Oppenheimer Defendants admit that venue is proper in this District under
22 28 U.S.C. §§ 1391(b) and 1400(b). Oppenheimer Defendants deny that venue is
23 proper in this District under 28 U.S.C. § 1391(c), and deny all remaining allegations
24 set forth in paragraph 3 of the Complaint.

25 **THE PARTIES**

26 4. Oppenheimer Defendants are without sufficient knowledge to allow them
27 to either admit or deny the allegations contained in paragraph 4 of the Complaint and
28 therefore deny such allegations.

OPPENHEIMER DEFENDANTS' ANSWER

1 5. Oppenheimer Defendants are without sufficient knowledge to allow them
2 to either admit or deny the allegations contained in paragraph 5 of the Complaint and
3 therefore deny such allegations.

4 6. Oppenheimer Defendants admit that Defendant Oppenheimer Cine
5 Rental, LLC ("Oppenheimer Cine") is a limited liability corporation organized under
6 the laws of the State of Washington. Oppenheimer Defendants admit that
7 Oppenheimer Cine is engaged in the business of renting film and video production
8 equipment including camera stabilizers. Oppenheimer Defendants deny the remaining
9 allegations contained in paragraph 6 of the Complaint.

10 7. Oppenheimer Defendants admit that Defendant Oppenheimer Camera
11 Products, Inc. ("Oppenheimer Camera") is a corporation organized under the laws of
12 the State of Washington. Oppenheimer Defendants admit that Oppenheimer Camera
13 is engaged in the business of producing and selling film and video production
14 equipment. Oppenheimer Defendants deny the remaining allegations contained in
15 paragraph 7 of the Complaint.

16 8. Oppenheimer Defendants admit that Defendant Marty Oppenheimer is an
17 individual who has an office at 7400 3rd Avenue South, Seattle, WA 98108 where he
18 may be served. Oppenheimer Defendants deny all remaining allegations set forth in
19 paragraph 8 of the Complaint, including that Marty Oppenheimer has ever been
20 personally involved in coordinating, supporting, and/or directing the alleged
21 infringing activities of Oppenheimer Cine and Oppenheimer Camera.

22 9. Oppenheimer Defendants deny that they have ever been supported, been
23 directed, or otherwise been involved in any coordinated effort to infringe any alleged
24 patent rights owned by Plaintiffs. Oppenheimer Defendants are without sufficient
25 knowledge to allow them to either admit or deny the remaining allegations contained
26 in paragraph 9 of the Complaint as they relate to Defendant Jordan Klein, Sr., and
27 therefore deny such allegations.

1 10. Oppenheimer Defendants deny that they have ever been supported, been
2 directed, or otherwise been involved in any coordinated effort to infringe any alleged
3 patent rights owned by Plaintiffs. Oppenheimer Defendants are without sufficient
4 knowledge to allow them to either admit or deny the remaining allegations contained
5 in paragraph 10 of the Complaint as they relate to Defendant Jordan Klein, Jr. and
6 therefore deny such allegations.

7 11. Oppenheimer Defendants deny that they have ever been supported, been
8 directed, or otherwise been involved in any coordinated effort to infringe any alleged
9 patent rights owned by Plaintiffs. Oppenheimer Defendants are without sufficient
10 knowledge to allow them to either admit or deny the remaining allegations contained
11 in paragraph 11 of the Complaint as they relate to Defendant John Dann and therefore
12 deny such allegations.

13 12. Oppenheimer Defendants deny that they have ever been supported, been
14 directed, or otherwise been involved in any coordinated effort to infringe any alleged
15 patent rights owned by Plaintiffs. Oppenheimer Defendants are without sufficient
16 knowledge to allow them to either admit or deny the remaining allegations contained
17 in paragraph 12 of the Complaint as they relate to Mako Products and therefore deny
18 such allegations.

19 13. Oppenheimer Defendants deny that they have ever been supported, been
20 directed, or otherwise been involved in any coordinated effort to infringe any alleged
21 patent rights owned by Plaintiffs. Oppenheimer Defendants are without sufficient
22 knowledge to allow them to either admit or deny the remaining allegations contained
23 in paragraph 13 as they relate to Defendant Oceanic Production Equipment Ltd. of the
24 Complaint and therefore deny such allegations.

25 14. Oppenheimer Defendants deny that any of them have ever acted in
26 concert to deprive Plaintiffs any alleged economic benefits associated with the alleged
27 patented invention. Oppenheimer Defendants also deny that they are jointly and
28 severally liable for any alleged damages that Plaintiffs claim to have suffered.

OPPENHEIMER DEFENDANTS' ANSWER

Oppenheimer Defendants also deny that they have infringed any alleged patent rights owned by Plaintiffs, and deny all remaining allegations of Paragraph 14 of the Complaint.

THE ASSERTED PATENT

15. Oppenheimer Defendants admit that United States Patent No. 6,611,662 (the “‘662 Patent”) purports to be entitled “Autonomous, Self Leveling, Self Correcting Stabilized Platform.” Oppenheimer Defendants admit that the ‘662 Patent is the subject of the lawsuit *Grober v. Mako Products, Inc.*, and that this lawsuit is purported to be currently pending in this District as Case No. 2:04-cv-08604. Oppenheimer Defendants deny that the ‘662 Patent, as broadly characterized by Plaintiffs, describes and claims a stabilizer for keeping a camera stable on a moving platform, such as a boat, and deny all remaining allegations set forth in paragraph 9 of the Complaint.

16. Oppenheimer Defendants admit that Exhibit A purports to be a true and correct copy of the ‘662 Patent. Oppenheimer Defendants deny that the validity of the ‘662 patent was affirmed in the United States Patent Office reexamination proceeding No. 95/000,092. Oppenheimer Defendants are without sufficient knowledge to allow them to either admit or deny whether Grober is the inventor and owner of the ‘662 patent or whether Grober holds all rights and interest thereto, and therefore deny such allegations. Oppenheimer Defendants are also without sufficient knowledge to allow them to either admit or deny whether Voice International has an exclusive license from Grober to commercialize the ‘662 Patent, and therefore deny such allegations.

COUNT 1 – WILLFUL INFRINGEMENT OF THE ‘662 PATENT

(Against All Defendants)

17. Oppenheimer Defendants hereby repeat, reallege, and incorporate by reference its response to paragraphs 1-16 above as though fully set forth herein.

18. Oppenheimer Defendants deny that the ‘662 Patent is valid and enforceable. Oppenheimer Defendants are without sufficient knowledge to allow

1 them to either admit or deny whether all required maintenance fees have been timely
2 paid, and therefore deny such allegations.

3 19. Oppenheimer Defendants deny that the MakoHead Camera Stabilizer
4 device infringes the '662 Patent. Oppenheimer Defendants are without sufficient
5 knowledge to allow them to either admit or deny Plaintiffs' allegations against
6 Defendants Jordan Klein, Sr., Jordan Klein, Jr., John Dann, Mako Products, or
7 Oceanic Production Equipment, Ltd., and therefore deny such allegations.

8 20. Oppenheimer Defendants admit that Oppenheimer Cine has rented and
9 offered for rental MakoHead Camera Stabilizers, but deny that Oppenheimer Cine has
10 ever "used," "sold," "offered for use," or "offered for sale" any MakoHead Camera
11 Stabilizers. Oppenheimer Defendants also deny that Oppenheimer Camera or Marty
12 Oppenheimer have ever "used, sold, rented, and/or offered for use, sale or rental" any
13 MakoHead Camera Stabilizers. Oppenheimer Defendants deny that MakoHead
14 Camera infringe any claims of the '662 Patent, and deny all remaining allegations of
15 paragraph 20 of the Complaint.

16 21. Oppenheimer Defendants admit that Oppenheimer Cine has rented and
17 offered for rental MakoHead Camera Stabilizers to video and film productions outside
18 this District from 2011 to the present, but deny that Oppenheimer Cine has ever "used,
19 rented sold and offered for rental and sale" any MakoHead Camera Stablizers to video
20 and film productions located in this District and denies that it has ever used, sold, or
21 offered for sale any MakoHead Camera Stabilizers to video and film productions
22 located outside this District. Oppenheimer Defendants deny that any MakoHead
23 Camera Stabilizers infringe the '662 Patent and deny all remaining allegations of
24 paragraph 21 of the Complaint.

25 22. Denied.

26 23. Oppenheimer Defendants admit that Oppenheimer Cine was named as a
27 defendant in the *Grober v. Mako Products, Inc.* case. Oppenheimer Defendants deny
28

1 that they have willfully infringed the '662 Patent and deny all remaining allegations of
2 paragraph 23 of the Complaint.

3 24. Denied.

4 25. Oppenheimer Defendants are without sufficient knowledge to allow them
5 to either admit or deny what documents were produced by other parties in the *Grober*
6 *v. MakoHead Products Inc.* case, and therefore deny such allegations.

7 26. Denied.

8 27. Denied.

9 **AFFIRMATIVE DEFENSES**

10 By asserting these affirmative defenses, Oppenheimer Defendants do not admit
11 that they necessarily bear the burden of proof of persuasion for any of the defenses or
12 issues alleged below. Moreover, at this time, Oppenheimer Defendants have
13 insufficient information and knowledge upon which to form a belief as to whether
14 additional defenses are or will later become available to them. Oppenheimer
15 Defendants reserve the right to amend their response to the Complaint to add, delete,
16 or modify defenses based on additional facts and legal theories which they may or will
17 learn, including that which may be divulged through clarification of the Complaint,
18 through discovery, through change or clarification of governing law, or through
19 further analysis of Plaintiffs' allegations and claims in this litigation. Subject to the
20 foregoing, for their affirmative defenses in this action, Oppenheimer Defendants
21 hereby assert and allege the following:

22 **FIRST AFFIRMATIVE DEFENSE**

23 **(Invalidity)**

24 1. Oppenheimer Defendants are informed and believe, and on that basis
25 allege, that the '662 Patent is invalid for failure to satisfy the conditions of
26 patentability as specified under one or more sections of Title 35 of the United States
27 Code, including, without limitation, 35 U.S.C. §§ 102, 103, and/or 112.

1 **SECOND AFFIRMATIVE DEFENSE**

2 **(Non-Infringement)**

3 2. Oppenheimer Defendants have not and do not infringe any claim of the
4 ‘662 Patent, either literally or under the doctrine of equivalents.

5 **THIRD AFFIRMATIVE DEFENSE**

6 **(Prosecution History Estoppel)**

7 3. By reason of the proceedings in the U.S. Patent and Trademark Office
8 (“USPTO”) during the prosecution of the application resulting in the issuance and
9 reexamination of the ‘662 Patent, namely, the admissions, representations, and
10 amendments made on behalf of the application for this patent, Plaintiffs are estopped
11 from extending the coverage of the asserted claims in the ‘662 Patent, including under
12 the doctrine of equivalents, to cover the accused instrumentalities.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 **(Acquiescence, Estoppel, Waiver or Laches)**

15 4. Upon information and belief, Plaintiffs have made claims that are barred
16 in whole or in part by the doctrines of acquiescence, estoppel, laches, or waiver.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 **(35 U.S.C. § 287 – Failure to Mark)**

19 5. Plaintiffs’ claims for damages as to the ‘662 Patent is barred, in whole or
20 in part, for failure to comply with 35 U.S.C. § 287.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 **(Failure to State a Claim Upon Which Relief Can Be Granted)**

23 6. Plaintiffs have failed to state a claim against Oppenheimer Defendants
24 upon which relief may be granted.

25 **SEVENTH AFFIRMATIVE DEFENSE**

26 **(Statute of Limitations)**

27 7. Some, if not all, of Plaintiffs’ claims for relief are barred, in whole or in
28 part, by the applicable statute of limitations.

OPPENHEIMER DEFENDANTS’ ANSWER

EIGHTH AFFIRMATIVE DEFENSE

(Innocent Infringement)

8. Plaintiffs' claims for relief are barred because the alleged infringement, if any, was innocent and not willful.

NINTH AFFIRMATIVE DEFENSE

(Absence Of Irreparable Harm)

9. Plaintiffs' claims for injunctive relief are barred because Plaintiffs will not suffer any irreparable harm and have an adequate remedy at law.

TENTH AFFIRMATIVE DEFENSE

(No Causation)

10. Plaintiffs' claims are barred because Plaintiffs' alleged injury and/or damages, if any, were not caused by Oppenheimer Defendants. Plaintiffs' claims made in the Complaint are also barred, in whole or in part, because Oppenheimer Defendants are not liable for acts of others over whom they have no control.

ELEVENTH AFFIRMATIVE DEFENSE

(No Damages)

11. Plaintiffs' claims are barred because there has been no damage in any amount by reason of any act alleged against Oppenheimer Defendants.

TWELFTH AFFIRMATIVE DEFENSE

(Reservation of Additional Defenses)

12. Oppenheimer Defendants presently have insufficient knowledge or information on which to form a belief as to whether there may be additional, as yet unstated, affirmative defenses. Thus, to the extent this Court may have jurisdiction herein, and subject to discovery in this action, Oppenheimer Defendants expressly reserve their right to assert additional affirmative defenses when and if they are appropriate.

PRAYER FOR RELIEF

WHEREFORE, Oppenheimer Defendants pray that the Court dismiss Plaintiffs' Complaint as to all Oppenheimer Defendants with prejudice, award Oppenheimer Defendants their reasonable attorneys' fees and costs incurred in connection with this lawsuit, and award Oppenheimer Defendants such other and/or further relief as the Court deems just and proper.

Dated: June 29, 2016

FOX ROTHSCHILD LLP

By /s/ Ashe Puri
James E. Doroshow
Ashe Puri
Attorneys for Defendants,
OPPENHEIMER CINE RENTAL, LLC,
OPPENHEIMER CAMERA PRODUCTS,
INC., AND MARTY OPPENHEIMER

JURY DEMAND

Oppenheimer Defendants hereby request a trial by jury on all issues so triable.

Dated: June 29, 2016

FOX ROTHSCHILD LLP

By /s/ Ashe Puri
James E. Doroshow
Ashe Puri
Attorneys for Defendants,
OPPENHEIMER CINE RENTAL, LLC,
OPPENHEIMER CAMERA PRODUCTS,
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